2013 IL App (1st) 122794-U

FIFTH DIVISION
December 27, 2013

No. 1-12-2794

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALFRED ADDY, Plaintiff-Appellant, v. CITY OF CHICAGO DEPARTMENT OF ADMINISTRATIVE HEARINGS and the CITY OF CHICAGO DEPARTMENT OF POLICE, Defendants-Appellees.	) Appeal from) the Circuit Court) of Cook County)))) No. 12 M1 450148))) Honorable Mark Ballard,) Judge Presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice McBride and Justice Taylor concurred in the judgment.

O R D E R

¶ 1 ***Held:*** The Department of Administrative Hearing's determination that plaintiff engaged in unsafe driving and that his chauffeur's license should be revoked were not clearly erroneous. The Department's imposition of a $1000 fine against plaintiff was vacated because it exceeded the $750 maximum fine.

¶ 2 This is an administrative review action. Following a hearing, the City of Chicago Department of Administrative Hearings (the Department) found that plaintiff, Alfred Addy,

violated a rule prohibiting unsafe driving, revoked plaintiff's chauffeur's license and imposed a fine against him of $1,000. Plaintiff sought administrative review in the circuit court of Cook County, which affirmed the Department's judgment. Plaintiff now appeals.

¶ 3 Plaintiff, a taxicab operator, received an administrative notice of violation after he was observed allegedly driving to the left of the center lane in violation of Rule 5.08(d) of the City of Chicago Department of Business Affairs and Consumer Protection Public Vehicle Operations Division's Public Chauffeur Rules and Regulations (the Chauffeur Rules). On March 8, 2012, the Department held a hearing regarding the citation before an Administrative Law Judge (ALJ). Plaintiff appeared at the hearing *pro se*. The following evidence was presented at that hearing.

¶ 4 Chicago police officer Quazi[1] testified that on January 16, 2012, he was on patrol when he saw cab number 5715 driving northbound on McClurg Court in the southbound lane. He pulled the cab over and issued an administrative notice of violation to its driver, who he identified as plaintiff. That citation was admitted into evidence. It stated that the "City service taxi #5715TX Maroon in color," driven by "Alfred Addy," was observed driving northbound in the southbound lane to the left of center.

¶ 5 Plaintiff testified on his own behalf that at the time he was pulled over by police, there was a "City Service" cab driving in front of him that changed lanes and that the officer mistakenly pulled plaintiff over and issued him a ticket. Plaintiff also testified that he changed lanes correctly and that he was only driving on the "broken line." Plaintiff claimed that the ticket

[1]The officer did not testify to his first name and it is not otherwise contained in the record.

was "wrong" because he it referred to "City Service Taxi," which is white, and not the maroon Royal Three CCC's taxi he was driving. On cross-examination, plaintiff acknowledged that the ticket stated that the offending cab was maroon in color and was cab number 5715, that his cab was maroon and that 5715 was his cab number. The City recalled Officer Quazi, who explained that he writes "City service taxi" on tickets to refer generally to a taxi operating in the city, and not to the taxi affiliation known as "City Service" taxi. The ALJ then admitted all of plaintiff's proffered exhibits into evidence, which consisted of two photographs of cab logos and a drawing of the area where he got the ticket done by plaintiff. At the conclusion of the hearing, the ALJ found that the City met its burden of proof and established that the officer properly issued an administrative notice of violation when he observed plaintiff's cab being driven unsafely, that the officer made no error when he described the taxi in the administrative notice and that plaintiff had failed to rebut the violation on the ticket.

¶ 6 On the question of the appropriate penalty, the City presented an exhibit showing that plaintiff had 11 prior violations of the Chauffeur Rules, including operating a vehicle with unsafe equipment and operating a taxi in an unsafe manner. The City asked the ALJ to consider those violations in aggravation, pointing out that the ALJ could consider prior violations that occurred within the preceding five years. The City argued that plaintiff had a pattern of unsafe driving and that the prior fines against plaintiff had not rectified that problem. Therefore, the City asked the ALJ to revoke plaintiff's chauffeur license and to impose the maximum fine of $1000 against him. In response, plaintiff argued that he had been driving a cab for over 15 years, that he had driven thousands of people during that time and that it was not uncommon to incur violations

after having driven for that long of a time. The ALJ found that the City had established that plaintiff had a pattern of unsafe driving and therefore revoked his chauffeur license and imposed a $1000 fine against him.

¶ 7 Plaintiff thereafter sought review in the circuit court of Cook County. There is no record of any documents submitted to or proceedings before the circuit court. However, the circuit court entered an order affirming the Department's findings and penalties against plaintiff. Plaintiff now appeals.

¶ 8 On appeal, this court's role is to review the administrative decision rather than the circuit court's decision. *Express Valet Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 847 (2007). For any given issue, the appropriate standard of review, which reflects the level of deference we afford the administrative agency, depends on whether the issue is one of fact, one of law, or a mixed question of law and fact. *Id.* at 847. An agency's findings of fact are deemed *prima facie* true and correct and will not be overturned unless they are against the manifest weight of the evidence. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008). An agency's factual findings are against the manifest weight of the evidence "if the opposite conclusion is clearly evident." *Id.* at 210. An agency's decision on a question of law, however, is not binding on a reviewing court and is reviewed *de novo*. *Id.* An agency's ruling on a mixed question of law and fact - a question in which the historical facts are admitted, the rule of law is undisputed, and the only question is whether the facts satisfy a statutory standard with which the agency has expertise - will not be disturbed unless clearly erroneous. *Id.* at 211. Under this standard, we afford some deference to the agency's experience and expertise and we

must accept the agency's finding unless after reviewing the record we are left with the " 'definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service Inc. v. Department of Employment Security*, 198 Ill.2d 380, 391-95 (2001), quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

¶ 9 Plaintiff initially contends that the Department's finding that he engaged in unsafe driving was clearly erroneous. Plaintiff reiterates his arguments made before the ALJ, including that the notice of violation indicates a "City Service" cab, which he does not drive, and that he was following a "City Service" cab and properly changing lanes when the police pulled him over and issued him a notice of violation.

¶ 10 Rule 5.08(d) of the Chauffeur Rules states:

> "Chauffeurs will operate their Public Passenger Vehicle in a safe and courteous manner at all times. Conduct constituting a violation of this section includes, but is not limited to, operating a taxicab in such a manner as to constitute a violation of any provision of Articles 2 though 12 of the Rules of the Road of the Illinois Vehicle Code (625 ILCS 5/11 *et seq*.)." Chauffeur Rules, R. 5.08(d).

On this basis, the Department found plaintiff liable for unsafe driving. The Department's finding was not clearly erroneous. Officer Qazi testified that he observed plaintiff driving his cab into the oncoming lane of traffic. The officer also explained why he wrote "City service" taxi on the ticket and identified plaintiff as the driver of the cab he observed driving in the wrong lane. The description of the offending cab, including its color and number, also matched the number and color of plaintiff's cab. It was the ALJ's responsibility to determine the credibility of the

witnesses and resolve conflicts in the testimony. See *McLean v. Department of Revenue*, 326 Ill. App. 3d 667, 673 (2001) (the administrative agency weighs the evidence, determines the credibility of witnesses, and resolves conflicts in testimony). Here, the ALJ credited the officer's testimony and found that the City met its burden of proof and established that plaintiff engaged in unsafe driving. That decision was not clearly erroneous.

¶ 11 Plaintiff next claims that the Department lacked jurisdiction to adjudicate his "moving violation." However, plaintiff received a ticket for violating an administrative rule governing those who hold chauffeur licences. The Department thereafter held a hearing to determine whether plaintiff violated that administrative rule, not to adjudicate a traffic violation. As the trial court told plaintiff during the administrative hearing, plaintiff was not issued a moving violation but, rather, an Administrative Notice of Hearing. Plaintiff makes no claim that the Department cannot properly adjudicate violations of administrative rules and, therefore, we find plaintiff's claim that the Department lacked jurisdiction to adjudicate his "moving violation" to be without merit.

¶ 12 Plaintiff also claims that revocation of his license was "too harsh" because he was a "first time offender." However, as we have already noted, the City presented evidence at the hearing that plaintiff had 11 prior violations of the Chauffeur Code within the past five years. The City thereby established that plaintiff was not a "first time offender." And Chauffeur Rule 16.02 explicitly authorizes revocation of a license for repeated offenses. Rule 16.02 states:

> "Penalties.
>
> Except as otherwise specified in particular rule or ordinance, any violations of

> these rules *** shall be subject to the following penalties:
>
> ***
>
> Repeated and/or Aggravated Offense: $200 to $750 fine; and/or license suspension up to twenty-nine (29) days and/or revocation of Chauffeur license." Chauffeur Rule 16.02, amended December 3, 2012.

The ALJ was tasked with weighing the evidence and imposing an appropriate sanction. The ALJ's decision to revoke plaintiff's license was supported by the evidence and was not clearly erroneous.

¶ 13 In a related argument, plaintiff claims that the ALJ's decision to revoke plaintiff's license will work a "hardship" upon him. However, the ALJ was certainly aware of the effect that revoking plaintiff's license would have upon him. The ALJ was also aware of plaintiff's history of moving violations and the danger they posed to the public. As noted, the ALJ was in the best position to determine the appropriate penalty and there is no basis in the record to disturb that determination.

¶ 14 Plaintiff also raises a number of arguments that he did not raise before the Department. These include that the ALJ should have considered plaintiff's "good recommendations" from other passengers, that he was denied his right under the Sixth Amendment to the United States Constitution to confront his accusers in the 11 prior cases involving unsafe driving, and that taxicab drivers are illegally coerced into plea bargains. However, issues or defenses not raised before the administrative agency are waived and cannot be raised for the first time on appeal. *Texaco-Cities Services Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 278 (1998). Accordingly,

because plaintiff did not raise these issues before the Department, we find that they are waived. We further note that the only record we have from the administrative review that plaintiff sought in the circuit court is the circuit court's order affirming the Department's decision. Plaintiff did not include a transcript of any hearing or any specification of errors before the circuit court. Accordingly, there is nothing to indicate that plaintiff raised these arguments in the circuit court, which provides another basis for finding the claims waived. See *North Avenue Properties, L.L.C. v. Zoning Board of Appeals of the City of Chicago*, 312 Ill. App. 3d 182, 187 (2000).

¶ 15 We also note that plaintiff was allowed to review the City's evidence regarding plaintiff's past violations and to make any arguments against it that he wished. Additionally, plaintiff did not present any evidence to the ALJ to support his claim that he was coerced into entering a plea bargain by the prosecution in some of his prior violations of the Chauffeur Rules. Plaintiff also did not present the ALJ with any of the commendations from other passengers upon which he now relies. See 735 ILCS 5/3-110 (West 2010) (stating that when a court reviews a final administrative decision, "[n]o new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court"). Finally, plaintiff's Sixth Amendment argument fails because the "protections provided by the Sixth Amendment are explicitly confined to 'criminal prosecutions.' " *Austin v. United States*, 509 U.S. 602, 608 (1993).

¶ 16 Plaintiff next challenges the $1000 fine imposed against him, arguing that the Chauffeur Rules permit only a maximum fine of $750 dollars. The City agrees with plaintiff. Rule 16.02 of the Chauffeur Rules permits a maximum fine, even for repeated violations or aggravated

offenses, of $750. Accordingly, we vacate the $1,000 fine imposed against plaintiff and remand the case to the circuit court with directions that it remand the case to the Department so that it can impose the maximum fine of $750.

¶ 17 For the foregoing reasons, we reverse the circuit court's ruling and the administrative decision as to the $1000 fined imposed and remand the case to the circuit court as discussed. We affirm the ruling of the circuit court and the administrative decision in all other respects.

¶ 18 Affirmed in part and reversed in part; cause remanded with directions.